

28. The use of any information for purposes other than the provision of the service from which it was obtained should be "presumptively restricted;"¹⁵ and the information should not be released to third parties or used for other purposes unless written authorization from the customer has been granted. By "presumptively restricted," we mean that information cannot be released unless the consumer "affirmatively consents" to the release of that information.

29. By subscribing to or ordering NII multimedia services, a user should be able to expect that her current standard of privacy will be maintained.¹⁶ If current expectations of privacy will not be preserved, that is, if there will be a "change in the outflow of information about a customer" as a result of the new service, the user should be informed of his "lost degree of privacy" and have the opportunity to restrict the outflow of information about himself, if he so desires.

B. Automatic Number Identification

30. Although consumers regularly orally disclose their name, telephone number, address, credit card and other information when purchasing goods or services through an 800 number, individual privacy is indeed additionally threatened by the potential passage of Automatic Number Identification (ANI) to firms with 800 and 900 numbers.¹⁷ When customers disclose address, credit card, and other such information orally, they are aware that they are doing so. However, unless the customer is a technologically savvy

¹⁵ NIRC, para. 21.

¹⁶ NIRC, para. 21.

¹⁷ NIRC, para. 37.

telecommunications user, she has probably never heard of ANI and is unaware that her number is being passed simply by dialing an 800 or 900 number. Furthermore, just because consumers voluntarily disclose their telephone numbers on some 800 service calls, does not mean that they expect their number to be released on every 800 call. This divergence between customer expectations and the actual release of personal information poses a threat to individual privacy.

31. The PUCT believes the same standards for privacy protection that we have discussed previously should be applied to the use and dissemination of information obtained via ANI. Because of the PUCT's limited jurisdiction over EXCs, the predominant providers of 800 and 900 services (and therefore ANI) to businesses, we were unable to adopt regulations that restrict the use of information obtained via ANI. We do, however, require LECs to notify customers that their telephone number may be transmitted to the called party when they dial an 800 or 900 number. LECs are required to print this information in the white pages of the directory and to send it as an annual billing insert.

32. The fact that, because of our limited jurisdiction, the PUCT is unable to enact stricter consumer privacy protections for ANI suggests that there is a distinct need for federal legislation in this area. Absent an overriding public policy reason (such as the provision of 911 Emergency Service), there is no reason that information received via ANI should be held to a different privacy standard than information received by means of another technology.

33. It should also be noted that ANI is not the only means by which the telephone number of the calling party can be identified. ANI provides the billing number associated with the calling party's line. Charge Number Parameter (CNP) is now available in Texas from Southwestern Bell Telephone in conjunction with Feature Group D switched access. CNP is the "Signaling System Seven (SS7) equivalent" of 10-digit ANI, which is provided over multifrequency signaling. Like ANI, CNP provides the called party with the billing number associated with the calling party. CNP should not be confused with yet another SS7 service, Calling Party Number Parameter (CPN), which provides the called party with the actual number the party is calling from (not the billing number associated with that line). Caller ID also uses SS7 technology.

34. An important distinction between ANI and the SS7 services is that with SS7, the caller is given the ability to "block," or prevent the transmission of, information provided via the service. Information provided via ANI is not blocked, whereas current technologies allow for blocking of information provided via the SS7 services. As the SS7-based technologies become more widespread, the technological tools will be available to enable customers to better control the outflow of information about themselves. Whether they are given the opportunity to do so will be up to policy-makers.

35. The above discussion reiterates the importance of developing privacy regulations that are technology-neutral. One benefit of the development of overarching privacy principles is to put the industry on notice that new technologies will be required to accommodate these principles.

C. Current Legislation

36. The PUCT believes that the approach taken in H.R. 3432, by Representative Edward Markey¹⁸ embodies many of the principles we have set forth in these comments. While the bill is limited in its application, it strikes the appropriate balance between the privacy interests of telephone subscribers and information providers, correctly taking the "opt-in approach" by requiring that the burden be on the party that gathers transactional information to obtain consent for the use of that information.¹⁹ We support H.R. 3432, and recommend that its approach and application be expanded to develop national privacy standards.

D. Responsibilities of NII Network Operators

37. We believe NII network operators and service providers should be required to inform their customers, both at the time service is established, and periodically thereafter, what Telephone Transaction Generated Information (TTGI) is accumulated about them, and how that information is used or disseminated to third parties.²⁰ Such a requirement will ensure that customers can make informed choices. Consumers should have the opportunity to maintain their current privacy standard, if they so choose, or to "opt-in."

38. Again, the PUCT believes that privacy standards should be applied fairly across service providers and across services.

¹⁸ NIRC, para. 38.

¹⁹ NIRC, para. 38.


²⁰ NIRC, para. 39.

39. Although the free flow of information increases the efficiency and competitiveness of markets, thereby benefitting both businesses and consumers, these considerations must be balanced against the legitimate concern for privacy, which is the cornerstone of a democratic society.

IV. CONCLUSION

40. In these comments, we have presented our support for the development of a comprehensive approach to privacy regulation. We believe the privacy standards set forth in our Telecommunications Privacy Rule can serve as a guideline to developing a set of standards for the NII. The privacy standards developed should be technology-neutral, appropriately balance consumer privacy interests and competitive concerns, facilitate customer choice, and maintain current privacy expectations unless the consumer "opts-in." Customer education is a critical component of an effective privacy policy. Furthermore, we support H.R. 3432 and recommend that its approach and application be expanded to develop national privacy standards.

Respectfully submitted,


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